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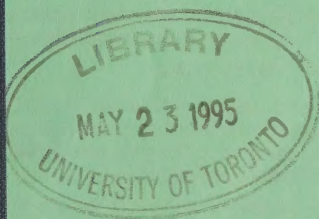
A RENEWED FRAMEWORK FOR GOVERNMENT ACCOUNTABILITY IN THE AREA OF SUSTAINABLE DEVELOPMENT: Potential Role for a Canadian Parliamentary Auditor/Commissioner for the Environment

by

**François Bregha
Philippe Clément**

Resource Futures International

January 1994



Working Paper for Discussion

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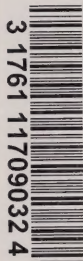
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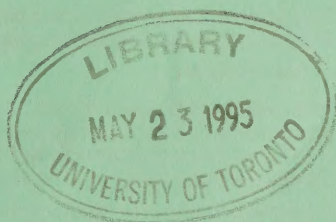
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Toutes les publications de la TRNEE sont publiées dans les deux langues officielles. Les documents de travail sont disponibles dans la langue de l'auteur, malgré que plusieurs documents sont maintenant disponibles en français et en anglais.

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1. ISSUE

What should be the mandate of a new environmental or sustainable development parliamentary officer?

2. BACKGROUND

In 1990, the National Round Table on the Environment and the Economy (NRTEE) recommended to the Prime Minister that an independent Environmental Auditor or Commissioner be established to report to Parliament on the effectiveness of the measures being taken to integrate environmental considerations into policy-making. The purpose of such public reporting would have been to assure the public that government departments were indeed implementing the measures needed to undertake environmental assessments of their policies, as had been promised by the Minister of the Environment in June 1990.

In 1993, the NRTEE recommended in its report, *Toward Reporting Progress on Sustainable Development in Canada*, that the federal government establish a capacity for:

- a. assessing and reporting annually on progress toward sustainable development within the federal government as a corporate entity; and
- b. reviewing the environmental implications of actions taken as a result of existing statutes, policies, programs, and regulations — as promised in Canada's Green Plan.

The NRTEE did not propose the structure this office should take, except to insist on its independence. One option would be to assign the responsibilities to an Environmental or Sustainable Development Auditor General or Commissioner.

During the 1993 federal election campaign, the Liberal Party of Canada promised to appoint an Environmental Auditor General within the first year of its mandate:

Our second task will be to appoint an Environmental Auditor General, reporting directly to Parliament, with powers of investigation similar to the powers of the Auditor General. This office would report annually to the public on how successfully federal programs and spending are supporting the shift to sustainable development. The report would also evaluate the implementation and enforcement of federal environmental laws. Individuals could petition the Environmental Auditor General to conduct special investigations when they see environmental policies or laws being ignored or violated.

The Minister of the Environment repeated this pledge in a speech on November 25, 1993, when she said:

Prime Minister Chrétien has asked me to develop a proposal for an Environmental Auditor General, a public watchdog reporting directly to Parliament. This office could draw public attention to the government's environmental performance and could spotlight and highlight areas for improvement. Presenting such a proposal to Cabinet is one of my urgent priorities.

The NRTEE's recommendations and the Liberal Party's platform are only two of several suggestions which have been made over the last four years for the creation of a new institution variously referred to as a "Parliamentary Commissioner for the Environment", or an "Environmental Auditor". Reflecting a variety of interests that have spoken on this issue, the requirements and tasks suggested for this office have ranged broadly and are not always compatible. It is not clear, for example, whether the

same individual should be responsible for auditing the environmental assessment of policy, conducting special investigations in response to requests from the public, reporting on progress toward sustainable development and reviewing federal taxes, all of which have been suggested at different times.

The creation of a new office raises two fundamental issues:

- *What should be its focus?*

The choice here is twofold:

- i) the promotion of environmental goals; or
- ii) the promotion of the much broader concept of sustainable development.

- *What should it do?*

Three generic options are available, each with its variants:

- i) auditing of selected federal government decision-making processes;
- ii) promotion of environmental or sustainable development goals and review of government policies to determine their effectiveness in promoting these objectives. This role is often associated with the office of a commissioner;
- iii) response to, and investigation of public complaints about the (mis)application of selected federal laws and regulations (ombudsman).

FIGURE 1

Auditor	Commissioner	Ombudsman
entirely retrospective	both retro- and prospective	largely retrospective
addresses system-wide management issues	addresses system-wide management issues	addresses individual cases
needs standards against which to audit	needs policy objectives against which to assess government performance	relies on laws and established procedures
addresses process and effectiveness issues	addresses both process and substance	can addresses both process and substance
power lies in disclosure	power lies in disclosure, exhortation and advice	power lies in forcing action

Each of these three functions has two possible variants depending on whether it is given an environmental or a sustainable development mandate. In addition, a few of these options can be combined with each other or with other existing institutions. These possibilities are explored further below.

It should be noted that one of the difficulties in analyzing these options is that those involved in the public debate over these issues have not used the terms "auditor", "commissioner" and "ombudsman" consistently to mean the same thing. Thus, the term "commissioner" sometimes subsumes the function of ombudsman and sometimes not. Some have described Ontario's

Environmental Commissioner as being really a sustainable development auditor. To minimize confusion, therefore, the text below describes these functions in generic terms.

The creation of a new office would require an Act of Parliament. Given the nature of the responsibilities to be conferred upon this office, the differing public expectations concerning its mandate, the public salience of environmental issues and the implications for the machinery of government, it would be advisable to consult interested stakeholders in advance of drafting such legislation. The National Round Table on the Environment and the Economy has offered to coordinate this consultation.

Such a consultation would have to be based on a discussion document setting out various options and their implications. It could include a series of small workshops with interested stakeholders held across the country.

3. OBJECTIVES

There are two principal reasons given for establishing a new independent office reporting to Parliament on environmental or sustainable development issues: (i) to enhance government accountability; (ii) to promote behavioural change.

3.1 Enhancing accountability

Each of the recommendations for the creation of a new independent office reporting to Parliament on environmental or sustainable development issues is rooted in the same concern for increasing the federal government's accountability for the resolution of environmental problems and the stewardship of Canada's resources within its jurisdiction.

The responsibility for environmental matters cuts across governmental and departmental lines. In 1990, the Auditor General counted 24 federal departments and agencies administering 50 different laws, and provincial administrations managing more than 130 statutes with environmental implications. He concluded that the federal-provincial and interdepartmental division of responsibilities makes it almost impossible to assign public accountability for environmental protection. Recent policy initiatives, such as the Green Plan and government reorganizations have not altered this state of affairs significantly.

Assigning accountability is complicated further by the fact that the environment is an area of shared federal-provincial jurisdiction. The process of interjurisdictional delegation (e.g. under the *Fisheries Act*, equivalency agreements under the *Canadian Environmental Protection Act*) has clouded accountability even further. In addition, because access to information legislation often shelters federal-provincial matters from public release, an area of shared jurisdiction like the environment, in which federal-provincial negotiations are the norm can remain largely shielded from public scrutiny. This can make accountability even more difficult.

The Auditor General of Canada set out some of these challenges in his 1990 report in which he argued that the federal government must be able to assert:

- *what it sees as its own overall responsibility for the environment;*
- *what it sees as the responsibility of others;*
- *who within the federal government is accountable to whom, and for what;*
- *what it expects to accomplish with its environmental programs;*

- *what controls exist at the centre to ensure that responsibilities are discharged;*
- *what is the nature and timing of the government's accountability reporting to the House of Commons.*

Most of these matters arguably remain outstanding.

3.2 Promoting behavioural change

The Brundtland Commission and the National Task Force on Environment and the Economy have both made the point that the achievement of sustainable development demands that environmental matters be considered at the same time as economic and social imperatives. Over time, it is likely that the mandate of several government departments will need to be broadened to include environmental matters explicitly. This, indeed has happened in Ontario under the new Environmental Bill of Rights.

In recent years, the federal government has launched several important legislative, programmatic and institutional initiatives to incorporate environmental matters more effectively in its own decision-making, among them:

- *the Canadian Environmental Protection Act and the Canadian Environmental Assessment Act;*
- *a multi-year multi-billion dollar Green Plan, containing over 100 initiatives;*
- *the creation of new institutions, such as the National Round Table on Environment and Economy, the International Institute on Sustainable Development and, for a time, a Cabinet Committee on the Environment;*
- *the consideration of environmental issues in all policy proposals going to Cabinet.*

Many observers believe that these reforms do not go far enough to resolve the environmental problems confronting Canada. They argue that even more profound behavioural changes need to occur to place Canada on a sustainable development path. In order to overcome the inertia acquired over several decades of policy and institutional development when environmental considerations did not matter, new mechanisms are needed to drive these changes over a long period of time. One such possible mechanism is the creation of a new institution which would legally require government agencies to report to Parliament on the actions they were taking to promote environmental or sustainable development values.

In summary, a new parliamentary office should:

- *enhance the accountability of Cabinet Ministers and senior government officials;*
- *promote behavioural change within government institutions.*

4. THE AUDITOR GENERAL'S SCOPE FOR ENVIRONMENTAL AUDITING

The Auditor General of Canada is an Officer of Parliament who reports annually to the House of Commons. He is not an ombudsman who, like the Parliamentary Commissioner for the Environment of New Zealand, acts upon requests from the public. He is the auditor of the accounts of Canada, including those related to the Consolidated Revenue Fund and any other financial statements that the government may present for audit.

In brief, the Auditor General of Canada assesses the compliance of departments, agencies and crown corporations with section 64 of the *Financial Administration Act* regarding financial statements. He reports to the House of Commons on significant matters regarding the maintenance of financial accounts, the management of public property, and the collection and allocation of revenues.

The Auditor General of Canada's concern with the federal government's accountability lies only with departments, agencies and crown corporations' compliance with their legislative mandates and administrative frameworks, as well as their reporting on planned and actual performance. He does not assess the merits of policy.

A grey area in this legislation concerns the Auditor General's mandate to report on the effectiveness of programs. He reports to the House of Commons on whether money has been expended with due regard to economy or efficiency (Sec.7 (2) (d)) and whether managers measure and report the effectiveness of programs, where this can reasonably be done (sec 7 (2) (e)). This makes him the judge of government money management and, therefore, potential umpire of the cost effectiveness of public policy.

Under Section 7(2)(b) and Section 11, the Auditor General of Canada is also expected to report on the proper safeguard of public property, which raises the question of the definition of "public property". Should Canada's environmental assets under federal jurisdiction be classified as "public property" and should management planning and control structures reflect this interpretation? The implications of such an interpretation would obviously be considerable and affect the current elaboration of major management and accountability instruments such as Budgets and Estimates.

In recent years, the Auditor General has devoted increased attention to environmental issues as part of his effectiveness and value-for-money audits. Appendix 2 sets out the Auditor's current definition of his scope to address environmental issues.

Unless the mandate of the Auditor General of Canada is broadened to address explicitly environmental matters, his office is likely to carry on auditing for economy, efficiency and effectiveness. In any event, it should be noted that his office now has little institutional capacity to assess the environmental dimensions of government policy or to act as an advocate for "greener" policies: the paucity of accepted audit standards and methods for environmental issues, and the training of his staff, militate against an easy expansion of his functions.

5. FOCUS

A new parliamentary office could pursue either an environmental or a sustainable development goal. Although the two concepts are sometimes merged as in the phrase "environmentally sustainable development", they are not the same. An environmental focus implies that the primary concern lies with the protection of ecosystem processes, the maintenance of biodiversity and the sustainable use of resources.

By contrast, sustainable development is a concept which seeks to integrate environmental, economic and social perspectives. Sustainable development therefore puts as much emphasis on economic development and equity issues as on environmental protection. Because trade-offs among these goals can be achieved at different levels of environmental, economic or social well-being and in different organizational settings, it is difficult to develop an operational definition of the concept. Methodological difficulties in devising a common unit of valuation for environmental, economic and social objectives compounds the problem. The adherents to sustainable development, therefore, put a great deal of emphasis on the process used to achieve these trade-offs.

The extent to which an administrative agent, such as an auditor, a commissioner or an ombudsman, rather than the political process, should define sustainable development is an open question.

A focus on environmental issues is much narrower than one on sustainable development. It has the advantage of more easily providing standards against which to measure the performance of government departments. These standards include laws, regulations, environmental quality objectives, international obligations and policies.

It should be noted, of course, that the consideration of environmental issues represents an essential element of a sustainable development strategy.

6. FUNCTIONS

There are three generic models from which to choose in designing a new office: an auditor, a commissioner, or an ombudsman. These models are not all compatible and therefore care should be taken to ensure that the mandate of any new office can be realized within the Canadian parliamentary tradition. For example, auditing functions have traditionally been kept separate from policy advisory functions as it is difficult to be both critic and member of a policy-making team. They require different skills and are usually carried out for different purposes: auditing is a key tool to ensure accountability; independent policy advice, on the other hand, can enrich internal analysis and programme development.

Although the precise powers of any of the three models described below remain to be defined, there appears to be a clear choice to be made between an auditor on the one hand and a commissioner and/or ombudsman on the other. The last two functions are often combined, including in the office of the Ontario Environmental Commissioner and the *Vérificateur à l'Environnement*, recommended by the *Conseil de la Conservation et de l'Environnement* to the Québec Environment Minister.

6.1 Audit function

The central purpose of auditing is to reinforce accountability. T. D'Arcy Finn states the rationale for auditing as follows:

within the organizations subject to review, the certain knowledge that everything that is done is an open book to reviewers acts as a strong check and balance on imprudent conduct, unprofessional administration or management, and disregard for established policies and procedures. These are positive for any organization faced with complex accountability requirements. (OPTIMUM, 24-2, p 20)

The main elements of the audit process include:

- *the accountable make known their own performance standards;*
- *critical functions for each main responsibility are made visible;*
- *the rationale for major choices is disclosed;*
- *external constraints are disclosed;*
- *quality controls are made visible;*
- *the accountable report their performance against their own standards and constraints;*
- *performance assertions are audited;*

- *government bodies respond to audits.*

This office could be modelled conceptually on the existing mandate of the Auditor General. An Environmental Auditor could audit the application of federal environmental laws, procedures, programs, policies and regulations and report on their efficiency and effectiveness (e.g., compliance, results achieved, value for money). The previous statement begs the question of what is an environmental law, program or policy. Many federal initiatives affect the environment as an unintended consequence of an economic or social objective (e.g., agricultural policies). These initiatives are audited by the Auditor General as a matter of course. For many initiatives that are not directly of an environmental nature but affect the environment, it might be difficult to avoid duplication between the activities and purview of the Auditor General and those of an Environmental Auditor. A close coordination of the activities of the two offices would clearly be required.

Auditing imposes costs on both auditor and client. Effective auditing requires considerable expertise about complex regulatory and technical issues, particularly where findings about effectiveness are to be made. The Office of the Auditor General, for example, has a professional staff of 500.

Effective auditing requires a careful balance between the identification of management weaknesses or failures and constructive criticisms: too much emphasis on the former (the "gotcha" school of auditing) can be counterproductive if it builds institutional resistance to necessary change; preoccupation with the latter, however, could reduce the accountability of the agencies being audited.

The work of an auditor takes place *post facto* and focuses on the application of processes. It does not comment on the substance of government policies.

6.2 Commissioner

An independent Commissioner reporting to Parliament on environment or sustainable development has frequently been mentioned as a promising approach to reinforcing accountability and promoting behavioural change. There are now several agencies which monitor government activity in light of a particular interest, including linguistic, government information, and human rights. An environmental or sustainable development Commissioner could be constituted according to these precedents. Two important differences should be noted, however: (i) these precedents are narrower in scope; (ii) in all cases, standards against which a Commissioner can assess government performance are clearly established.

A Commissioner's role differs from that of an Auditor in at least two important respects. Although a Commissioner comments on past performance, he can also help project a vision for the future. He can, therefore, comment on policy and is not restricted primarily to questions of efficiency and effectiveness of process. A Commissioner's mandate, therefore, has a normative dimension to it.

A Commissioner can also support departments in their efforts to take environmental or sustainable development considerations into account in their programs and policies through advice, training, pioneering methodological tools, developing information systems and indicators, etc. This is one of the main responsibilities of the Ontario Environmental Commissioner.

Another possible role for a commissioner would be to assess and report annually on progress toward sustainable development, as recommended by the NRTEE.

6.3 Ombudsman

The offices of Canadian parliamentary commissioners frequently include an ombudsman's role. The Commissioners for Official Languages, Access to Information and Human Rights, for example, act

upon complaints from the public as well as monitor government performance. The delineation between commissioner and ombudsman, therefore is not clear-cut.

Canada has no experience with a parliamentary office acting purely as an environmental or sustainable development ombudsman. It should be noted, however, that the recently established Ontario Environmental Commission will play this role. The British Columbia ombudsman has also addressed environmental issues as part of his mandate.

The mandate of an ombudsman would have to set out the grounds for public complaints. With the exception of the *Canadian Environmental Protection Act* which allows citizens to request the Minister to investigate alleged offences under the Act (S.108- 110), federal environmental legislation has no such provisions now. Only two such requests have been made since 1988 although the Department has received other requests for investigation that did not fall under the Act.

Environmental groups have argued in the past that, if the federal government were compelled to respond to citizen's complaints, it would enforce its laws more diligently and be more publicly accountable. Industry, on the other hand, has expressed concern that the existence of such avenues for review could lead to frivolous complaints and reduce desirable flexibility in government enforcement activities. It has also been argued that a legal obligation to respond to public complaints can skew an agency's ability to set and follow priorities as resources are diverted from other tasks.

7. CRITERIA

Although the options set out below range broadly in focus, function and resource implications, they all share common desirable attributes. These include independence, a unique mandate, clearly spelled-out norms of evaluation, the power to report regularly and adequate resources.

7.1 Independence

According to T. D'Arcy Finn, "independence is not merely technical or legal, it is also behavioural." Independence, in other words, must not only be acquired, it must also be demonstrated. A supine parliamentary office may be less effective than a vigorous office of the Crown. Although this argument would lead one to consider the possibility of locating any of the functions described above within the executive arm of government, this option is unlikely to exist in practice. All those who have argued in favour of creating a new agency have stressed that the appearance of independence was as important as the reality. The long term ability of an agency within the executive to pursue its agenda without administrative interference is also open to question.

The creation of a new parliamentary officer, of course, would not reduce the need for the government to ensure that its own internal audit, evaluation, monitoring and reporting functions take environmental considerations into account. Central agencies, such as Treasury Board, would have an important role to play in this regard.

If independence is a prerequisite to effectiveness, such independence could only be achieved to the extent that Parliament supported and used the new institution it would have created. A symbiotic relationship between Parliament and the agency is therefore likely to develop under which the new agency would need periodically to demonstrate its usefulness to Parliament while Parliament would systematically apply the information it received from the agency.

The term of office, the nominating process, the mandate and statutory powers would all be important determinants of the agency's independence.

7.2 Unique mandate

Whatever office is created, it will not exist in a vacuum and it will need to be able to operate within the boundaries of a yet to be created national environmental conservation/sustainable development framework. In addition, many existing institutions already share the general objectives of reinforcing accountability and promoting behavioural change discussed in Section 3. The mandate of the new agency would therefore have to be defined in light of what already exists. The fact that institutions with related mandates already exist creates an opportunity. To the extent that the creation of a new office opens the door to reorganizing certain government functions, it may be desirable to consider whether related activities should be grouped differently. Related institutions or mechanisms include:

- *environmental indicators* — These are a fundamental element of a strategy to measure performance. They would therefore be used extensively by an auditor or commissioner. In the Green Plan, the previous government committed itself to establishing a "National State of the Environment Reporting Organization" at arm's length from government departments;
- *the Canadian Environmental Assessment Agency* — It could be given certain powers to monitor the federal environmental assessment process, particularly as it relates to policy, as part of the promised strengthening of the organization;
- *the Auditor General* — In recent years, the Auditor General has commented extensively on environmental issues. His mandate could be broadened to include environmental responsibilities.

7.3 Norms of audit and evaluation

Whereas the implementation of this concept for financial issues is well understood, exactly what government departments should be accountable for in environmental terms is less clear. Where environmental quality or environmental policy objectives do not exist, an Auditor or Commissioner would be handicapped. The absence of accepted auditing standards could circumscribe the functions of an environmental auditor, at least at first.

One option for developing such standards would be to require each government department to define environmental or sustainable development objectives and five year action plans which an Auditor or Commissioner would review. Such objectives would be similar in spirit, though not in substance, to the "statements of environmental values" which Ontario government ministries must develop under the new Environmental Bill of Rights.

Alternatively, the Auditor or Commissioner could establish such standards as his first order of business. The Auditor General, for example, developed his own value-for-money standards to audit programs. Whether an Auditor or a Commissioner is established, a balance would have to be struck between (i) the objective of early action at the risk of applying untested standards; and (ii) the objective of developing sound standards at the possible cost of delayed action.

Norms of evaluation are not an issue for an ombudsman whose investigative and reporting powers would be specified in legislation.

7.4 Reporting powers

The greatest power of a new parliamentary officer is likely to lie in his ability to disclose information. This power should therefore be spelled out explicitly in legislation creating the new office.

7.5 Resources

The Liberal Party stated that the budget for this new office is to be taken from the Office of the Auditor General's current budget. Given that the Auditor General's budget is already to be cut as a result of government-wide restraint, funding a new office will be difficult. Available funding may limit the scope of the new office's mandate.

8. A FOREIGN EXAMPLE

New Zealand

In New Zealand, the 1986 *Environment Act* established a Parliamentary Commissioner for the Environment, which is believed to be unique in world parliamentary systems. As an Officer of Parliament, the Commissioner remains independent of Ministerial direction and reports directly to the House of Representatives through the Speaker.

In essence, the New Zealander Commissioner conducts investigations when (1) "there is a significant deficiency in the legislation relating to the allocation, use or preservation of a natural or physical resource;" (2) "the environmental planning or management carried out by a public authority has been ineffective;" (3) "significant adverse effects on the environment have arisen as a result of the acts or omissions of any public authority." The New Zealander Commissioner reviews and reports on environmentally significant legislation or petitions before the House of Representatives; undertakes inquiries, at the request of the House of Representatives; and has the power to summon individuals and state organizations. The Commissioner also has the right to appear and be heard at statutory consent hearings.

In reviewing the effectiveness of state agencies' environmental management, the Commissioner acts as an environmental auditor. In addition, the Commissioner provides an independent review of assessments of proposals having environmental implications for the country. Such proposals include both industrial projects and government policy.

(See Appendix 4 for further information.)

9. OPTIONS

At the beginning of this paper, it was suggested that two main objectives motivate the creation of a new parliamentary office: (i) the reinforcement of government accountability; (ii) the promotion of behavioural change. While it can be argued that all the options below achieve these twin objectives, the relative emphasis one places on these is likely to influence one's choice. Thus, those who believe that reinforcing accountability is more important will probably opt for one of the auditor options. On the other hand, those who believe that the promotion of behavioural change is most required are likely to choose one of the commissioner options.

The choices relate to focus and function, and the number of related institutions mean that there are many options for designing a new parliamentary office. Eight are presented below. Each of these options is premised on the assumptions that a new officer would be independent, given adequate resources to discharge his powers and would report publicly at his discretion.

9.1 Environmental Auditor

An Environmental Auditor could be created to:

- i) audit the implementation of the *Canadian Environmental Assessment Act*. As the Act perpetuates the self-assessment approach to the environmental assessment of projects and policies, an independent authority could ensure that the process is being applied effectively;
- ii) encourage consistency, compliance and quality in the integration of environmental considerations into government programs and policies, as Cabinet mandated in June 1990.

It has also been suggested that an environmental auditor could be asked to report annually on the costs of environmental damage to the Canadian economy.

Arguments in favour of this option include that (i) a model for such an office already exists in the Office of the Auditor General; (ii) auditing standards would be directly related to decision-making processes set out in government policy or legislation. Broadening the Environmental Auditor's mandate would make it necessary to develop additional standards of review. Arguments against include (i) potential duplication with the Auditor General; (ii) possible emphasis on fault-finding at the expense of constructive advice.

The Liberal platform suggests that "the first task of the Environment Auditor General will be to conduct a comprehensive review of federal taxes, grants and subsidies in order to identify barriers and disincentives to sound environmental practices". Since the definition of what constitutes a "sound environmental practice" requires a value judgment, it does not provide an accepted standard against which to conduct a "comprehensive review of federal taxes, grants and subsidies". It may be inappropriate therefore to assign this responsibility to an auditor.

There is a second reason why mandating an Environmental Auditor with an environmental review of fiscal policy should be reconsidered. The creation of such an office is likely to take at least a year since it will require legislation and may also benefit from a consultation period. This would delay the environmental review of federal taxes into 1995, well after the government's fiscal framework has been established for this mandate.

9.2 Environmental Commissioner

An Environmental Commissioner could act as a driving force to promote environmental values in the federal government. Arguments in favour of creating an Environmental Commissioner include: (i) a Commissioner could offer comments on environmental impacts of policy; (ii) minimum duplication with the Auditor General of Canada. Arguments against: (i) creating a new office would be costly; (ii) the difficulty in developing standards to measure effectiveness.

9.3 Environmental Ombudsman

An Environmental Ombudsman would investigate public complaints that the federal government was not enforcing its environmental laws and regulations. Arguments in favour of creating an environmental ombudsman include: (i) greater governmental accountability, through a more direct public scrutiny; (ii) more vigorous enforcement of federal environmental laws. Arguments against include: (i) a reactive mandate; (ii) possibly increased government operating costs; (iii) no direct promotion of environmental values.

9.4 Sustainable Development Auditor

A Sustainable Development Auditor would report on the effectiveness of federal decision-making processes in promoting sustainable development. Arguments in favour include: (i) recognition of the need to integrate environmental and economic factors in decision-making. Arguments against: (i) absence of a definition of sustainable development; (ii) the difficulty of translating the concept of sustainable development into legal requirements.

9.5 Sustainable Development Commissioner

A Sustainable Development Commissioner could play the same support or "coaching" role for government departments as an Environmental Commissioner. A sustainable development commissioner could also report on Canadian progress toward sustainability as recommended by the NRTEE. The British Columbia Round Table on Environment and Economy is already mandated to produce such reports for the province.

Arguments in favour of creating a sustainable development commissioner include: (i) confirmation of the government's commitment toward sustainable development. Arguments against include: (ii) the methodological difficulties in reaching widely agreed criteria of sustainable development; (iii) the difficulty of translating the concept of sustainable development into legal requirements.

9.6 Sustainable Development Ombudsman

A Sustainable Development Ombudsman would investigate public complaints that the federal government was not promoting sustainable development through its laws, regulations, policies and programs. Arguments in favour of creating a sustainable development ombudsman include: (i) greater public access and governmental accountability. Arguments against include: (i) no accepted definition of sustainable development; (ii) the difficulty of translating the concept of sustainable development into legal requirements.

9.7 Combination of Sustainable Development Commissioner and enhancement of the environmental responsibilities of the Auditor General

A variant to option 5 above would confer explicit responsibilities to the Auditor General for environmental matters. This could include naming one of the current three Deputy Auditors General "Environmental Auditor". The rest of option 5 would remain the same. Arguments in favour include: (i) more thorough achievement of twin objectives identified in Section 3; (ii) immediate action in establishing the Environmental Auditor administratively. Arguments against: (i) increased complexity of Parliamentary review and oversight functions.

9.8 Combination of Environmental Commissioner and State of the Environment Reporting Branch

A variant to option 2 would provide the Commissioner with the resources of Environment Canada's State of the Environment Reporting Branch. Arguments in favour include: (i) greater analytical resources to the Commissioner; (ii) greater perceived independence in the production of

environmental indicators and SOE reports. Arguments against: (i) possible confusion of roles; (ii) additional workload on an already overstretched organization.

10. CONCLUSION

The creation of a new parliamentary office presents two choices:

- *in focus: environment or sustainable development*
- *in function: auditor, commissioner or ombudsman*

These choices should be made on the basis of the relative importance one attaches to the objectives of i) promoting accountability and ii) encouraging behavioural changes.

Important considerations in designing the new office include independence, unique mandate, norms of audit and evaluation, reporting powers and resources.

APPENDIX 1
CALLS FOR AN ENVIRONMENTAL\SUSTAINABLE
DEVELOPMENT COMMISSIONER\AUDITOR
GENERAL

In the last four years several groups and individuals have considered the issues presented in this paper and have suggested that Canada's environment would be better protected if a "watchdog" was appointed to focus only on environmental management issues. The following is a list of some of these suggestions:

The authors of Greenprint for Canada, a report addressed to the Prime Minister by a coalition of environmental and aboriginal organizations recommended in June 1989:

...the appointment of an Environmental Auditor General, somewhat analogous to the Auditor General of Canada. The Environmental Auditor would report directly to Parliament and would be empowered to periodically review compliance by federal departments and agencies with environmental assessment, laws and policies (Page 24-25).

In October 1990, the National Round Table on the Environment and the Economy (NRTEE) recommended to the Prime Minister:

The establishment of a Parliamentary Commissioner (or an Auditor) on sustainable development whose responsibility would be to monitor the implementation of the policy assessment process and to report publicly on federal agency's compliance with it.

(In October 1993, the NRTEE reiterated its opinion that such a function would be a requirement to progress toward sustainable development.)

On November 8, 1990, the Rawson Academy on Aquatic Sciences made the following argument to the environment committee on Bill C-78:

In our view, the best means to reinforce this accountability is to create a parliamentary commissioner for the environment, with a mandate modelled on that of the Auditor General...The creation of the office of such a commissioner would require legislation. We would recommend, therefore, that Bill C-78 be amended to provide for the establishment of such an office (Hansard, Pre- study of Bill C-78, November 8, 1990).

On December 4, 1990, Marlene Catterall, federal MP moved that:

...the government should consider the advisability of establishing the position of Environmental Auditor General, whose purpose would be to conduct an audit of all government operations on a rotational basis to ensure that any activity, program or initiative of the government is conducted in a manner which is compatible with a policy of protection and enhancement of the environment (Hansard, December 4, 1990, 16234).

In December 1990, Len Taylor, M.P. from the New Democratic Party declared before Parliament:

Our recommendation is that the House of Commons immediately adopt legislation which would establish an environmental auditor to review the sustainability and environmental soundness of all federal projects and undertakings (Hansard, December 4, 1990, 16240).

In March 1992 Paul Martin, Opposition Environment Critic in the House of Commons released a discussion paper called *The Environment: A Liberal Vision*. The paper recommends various institutional initiatives, including a legislated environmental bill of rights and the establishment of an "office of a federal auditor for the environment to help Canadians keep track of the state of the environment and to hold government accountable for its policies and operations".

In the course of 1990, Parliament held public hearings regarding the proposed legislation on environmental assessment C-78. The West Coast Environmental Law offered the following definition:

Commissioner means the Parliamentary Commissioner on Sustainable Development appointed pursuant to subsection 55.1(1) (Library of Parliament. Summary of Submissions. November 27, 1990. See: Definitions 2.(1)).

In September 1992, the Ontario Round Table on Environment and Economy recommended in its report *Restructuring for Sustainability*, that *the Government of Ontario establish an office of Commissioner of Sustainability, equivalent in stature to the Provincial Auditor. Based on a set of appropriate indicators, the commissioner would report on Ontario's efforts to achieve sustainable development...*

The Liberal Party's commitment to the creation of an office of an environmental auditor was reiterated during the last federal election campaign and, the current Administration is now committed, within the first year of its mandate, to:

...appoint an Environment Auditor General to report directly to Parliament on the effectiveness of all federal programs in supporting sustainable development...The Environment Auditor would report annually to the public on how successful federal programs and spending are in supporting the shift to sustainable development ...Individuals could petition the Environmental Auditor General to conduct special investigations when they see environmental policies or laws being ignored or violated (Liberal News Release, October 14, 1993).

APPENDIX 2

SCOPE OF THE CURRENT MANDATE OF THE AUDITOR GENERAL OF CANADA TO ADDRESS ENVIRONMENTAL ISSUES

SUMMARY OF RESPONSIBILITIES

ACTIVITY	PRIMARY RESPONSIBILITY	OAG MANDATE	ADDITIONAL CONTROLS
MAJOR AUDIT AND REVIEW RESPONSIBILITIES			
Environmental audit	Departments, agencies	Yes - VFM & Compliance Yes - Special Exams	OCG, Stewardship Off. Env. groups
Environmental assessment of projects	Departments, agencies	Yes - VFM & Compliance Yes - Special Exams Note 1	Can. Env. Assess. Agency, Env. groups Public interest Media
Env. implications of new policies and programs	Departments, agencies	Yes - Procedures and Reporting No - Policy	Public interest Env. groups Media Env.Cttee, CCME
Env. implications of existing policies, programs, statutes and regulations	Departments, agencies	Yes - Procedures and Reporting No - Program Evaluation	Env. groups Media, Env. Ctee. National Round Table (NRTEE)
Management of environmental issues, programs and projects	Departments, agencies	Yes - VFM and Compliance	Parliamentary Cttees Env. groups Media
Code of environmental Stewardship	Departments, agencies Env. Stewardship Office	Yes - VFM and Compliance	Env. Cttee Env. groups, Media
Compliance with and enforcement of environmental legislation	Departments, agencies	Yes - VFM and Compliance	Env. groups, Media Individuals (CEPA)
State of the Environment Reporting	Dept. of Environment Statistics Canada	Yes - VFM and Compliance	Parliamentary Cttees Env. groups, CCME Nat. Round Table
OTHER RESPONSIBILITIES			
Env. Ombudsman	Provincial ombudsmen Human Rights Comm.	No	Media
Access to information	Departments, agencies, Access to Information Commissioner	Yes - VFM	Media, Env. groups Public interest
Advice, policy, criticism advocacy	Environmental groups Minister of Environment Parliamentarians Standing Committee Round Tables, Council of Ministers	No	Media Public interest
Inquiries, investigations	Ombudsman Standing Committee	Yes - AG Act (S.11)	Env. groups, Media
Arbitrary disputes	Ombudsman Courts	No	Media, env. groups

APPENDIX 3

**BILL 26. AN ACT RESPECTING ENVIRONMENTAL
RIGHTS IN ONTARIO
(PART III, COMMISSIONER FOR THE
ENVIRONMENT)**

3RD SESSION, 35TH LEGISLATURE, ONTARIO
42 ELIZABETH II, 19933^e SESSION, 35^e LÉGISLATURE, ONTARIO
42 ELIZABETH II, 1993**Bill 26****An Act respecting
Environmental Rights in Ontario****The Hon. B. Wildman**
Minister of Environment and Energy1st Reading May 31, 1993
2nd Reading
3rd Reading
Royal AssentPrinted under authority of the
Legislative Assembly by the
Queen's Printer for Ontario**Projet de loi 26****Loi concernant les droits
environnementaux en Ontario****L'honorable B. Wildman**
Ministre de l'Environnement et de l'Énergie1^{re} lecture 31 mai 1993
2^e lecture
3^e lecture
sanction royaleImprimé avec l'autorisation
de l'Assemblée législative par
l'Imprimeur de la Reine pour l'Ontario

appellate body considers it appropriate to proceed sooner.

Participation
in applica-
tion or
appeal

(6) In order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the application or appeal, the appellate body may permit any person to participate in the application or appeal, as a party or otherwise.

Same

(7) In reaching a determination under subsection (6), the appellate body shall have regard to the intent and purposes of this Act.

Existing
rights of
appeal not
affected

48. Nothing in this Part shall be interpreted to limit a right of appeal otherwise available.

article, sauf s'il juge approprié de commencer plus tôt.

(6) Pour assurer une représentation équitable et adéquate des intérêts privés et publics, y compris les intérêts gouvernementaux, qui sont en cause dans la requête ou l'appel, l'organisme d'appel peut permettre à quiconque de participer à la requête ou à l'appel en tant que partie ou à un autre titre.

Participation
à la requête
ou à l'appel

(7) Pour prendre une décision en vertu du paragraphe (6), l'organisme d'appel tient compte de l'intention et des objets de la présente loi.

Idem

48 La présente partie n'a pas pour effet de limiter tout droit d'appel qui existe par ailleurs.

Aucune inci-
dence sur les
autres droits
d'appel

PART III THE ENVIRONMENTAL COMMISSIONER

Environ-
mental
Commis-
sioner

49.—(1) There shall be an Environmental Commissioner who is an officer of the Assembly.

Appointment

(2) The Lieutenant Governor in Council shall appoint the Environmental Commissioner on the address of the Assembly.

Term of
office

(3) The Environmental Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms.

Removal

(4) The Lieutenant Governor in Council may remove the Environmental Commissioner for cause on the address of the Assembly.

Nature of
employment

(5) The Environmental Commissioner shall work exclusively as Commissioner and shall not hold any other office under the Crown or engage in any other employment.

Salary of
Environ-
mental
Commis-
sioner

50.—(1) The Environmental Commissioner shall be paid a salary within the range of salaries paid to deputy ministers in the Ontario civil service.

Same

(2) The salary of the Environmental Commissioner, within the salary range referred to in subsection (1), shall be determined and reviewed annually by the Board of Internal Economy.

Pension of
Environ-
mental
Commis-
sioner

51. The Environmental Commissioner is a member of the Public Service Pension Plan.

Oath of
office

52. Before commencing the duties of his or her office, the Environmental Commissioner shall take an oath, to be administered by the Speaker of the Assembly, that he or she will faithfully and impartially exercise the functions of his or her office.

PARTIE III LE COMMISSAIRE À L'ENVIRONNEMENT

49 (1) Est créé le poste de commissaire à l'environnement dont le titulaire doit être un fonctionnaire de l'Assemblée.

Commissaire
à l'environne-
ment

(2) Le lieutenant-gouverneur en conseil nomme le commissaire à l'environnement sur adresse de l'Assemblée.

Nomination

(3) Le commissaire à l'environnement occupe son poste pendant un mandat de cinq ans, qui est renouvelable.

Mandat

(4) Le lieutenant-gouverneur en conseil peut, sur adresse de l'Assemblée, révoquer le commissaire à l'environnement pour un motif valable.

Révocation

(5) Le commissaire à l'environnement travaille exclusivement en sa qualité de commissaire et n'occupe pas d'autre charge relevant de la Couronne, ni n'exerce d'autre emploi.

Nature de
l'emploi

50 (1) Le commissaire à l'environnement reçoit un traitement qui se situe dans l'échelle des traitements versés aux sous-ministres de la Fonction publique de l'Ontario.

Traitement
du commis-
saire à l'envi-
ronnement

(2) Le traitement du commissaire à l'environnement, qui se situe dans l'échelle des traitements visée au paragraphe (1), est fixé et, chaque année, réexaminé par la Commission de régie interne.

Idem

51 Le commissaire à l'environnement est un participant du Régime de retraite des fonctionnaires.

Pension du
commissaire à
l'environne-
ment

52 Avant d'entrer en fonction, le commissaire à l'environnement prête, devant le président de l'Assemblée, le serment d'exercer avec loyauté et impartialité les fonctions inhérentes à sa charge.

Serment d'en-
trée en fonc-
tion

Temporary
appointment

53.—(1) If the Environmental Commissioner dies, resigns or is unable or neglects to perform the functions of his or her office while the Assembly is not in session, the Lieutenant Governor in Council may appoint a temporary Environmental Commissioner to hold office for a term of not more than six months.

Same

(2) A temporary Environmental Commissioner shall have the powers and duties of the Environmental Commissioner and shall be paid the remuneration and allowances fixed by the Lieutenant Governor in Council.

Staff

54.—(1) Subject to the approval of the Board of Internal Economy, the Environmental Commissioner may employ such employees as the Commissioner considers necessary for the efficient operation of his or her office and may determine their remuneration, which shall be comparable to the remuneration for similar positions or classifications in the public service of Ontario, and their terms of employment.

Benefits

(2) The employee benefits applicable from time to time to the public servants of Ontario with respect to,

- (a) cumulative vacation and sick leave credits for regular attendance and payments in respect of those credits;
- (b) plans for group life insurance, medical-surgical insurance or long-term income protection; and
- (c) the granting of leave of absence,

apply to the employees of the office of the Environmental Commissioner.

Same

(3) Where the benefits referred to in subsection (2) are provided for in regulations under the *Public Service Act*, the Environmental Commissioner, or any person authorized in writing by him or her, may exercise the powers and duties of a minister or deputy minister or of the Civil Service Commission under the regulations.

Pensions

(4) The employees of the office of the Environmental Commissioner are members of the Public Service Pension Plan.

Budget

55. The Board of Internal Economy may from time to time issue directives to the Environmental Commissioner with respect to the expenditure of funds and the Environmental Commissioner shall follow the directives.

Audit

56. The accounts and financial transactions of the office of the Environmental

53 (1) Si le commissaire à l'environnement décède ou démissionne, ou qu'il est empêché ou néglige de remplir les fonctions inhérentes à sa charge lorsque l'Assemblée ne siège pas, le lieutenant-gouverneur en conseil peut nommer un commissaire à l'environnement intérimaire dont la durée du mandat ne doit pas dépasser six mois.

Intérim

(2) Le commissaire à l'environnement intérimaire a les pouvoirs et fonctions du commissaire à l'environnement et reçoit la rémunération et les indemnités que fixe le lieutenant-gouverneur en conseil.

Idem

54 (1) Sous réserve de l'approbation de la Commission de régie interne, le commissaire à l'environnement peut employer les personnes qu'il juge nécessaires pour assurer le bon fonctionnement de son bureau et fixer leur rémunération, qui doit être comparable à celle versée pour des postes ou catégories semblables dans la fonction publique de l'Ontario, ainsi que leurs conditions de travail.

Personnel

(2) S'appliquent aux employés du bureau du commissaire à l'environnement, les avantages sociaux applicables aux fonctionnaires de l'Ontario en ce qui concerne :

Avantages
sociaux

- a) les crédits de vacances et de congés de maladie pour assiduité cumulatifs, ainsi que la rétribution qui se rattache à ces crédits;
- b) les régimes d'assurance-vie collective, d'assurance de frais médicaux et chirurgicaux ou de protection du revenu à long terme;
- c) l'octroi de congés autorisés.

(3) Lorsque les avantages sociaux visés au paragraphe (2) sont prévus par les règlements pris en application de la *Loi sur la fonction publique*, le commissaire à l'environnement ou toute personne autorisée par écrit par ce dernier peut exercer les pouvoirs et fonctions que ces règlements confèrent à un ministre, à un sous-ministre ou à la Commission de la fonction publique.

Idem

(4) Les employés du bureau du commissaire à l'environnement sont des participants du Régime de retraite des fonctionnaires.

Pensions

55 La Commission de régie interne peut, de temps à autre, donner au commissaire à l'environnement des directives en ce qui concerne les dépenses et ce dernier doit s'y conformer.

Budget

56 Le vérificateur provincial vérifie, chaque année, les comptes et les opérations

Vérification

Commissioner shall be audited annually by the Provincial Auditor.

Fonctions

57. In addition to fulfilling his or her other duties under this Act, it is the function of the Environmental Commissioner to,

- (a) review the implementation of this Act and compliance in ministries with the requirements of this Act;
- (b) at the request of a minister, provide guidance to the ministry on how to comply with the requirements of this Act, including guidance on,
 - (i) how to develop a ministry statement of environmental values that complies with the requirements of this Act and is consistent with other ministry statements of environmental values, and
 - (ii) how to ensure that the ministry statement of environmental values is considered whenever decisions that might significantly affect the environment are made in the ministry;
- (c) at the request of a minister, assist the ministry in providing educational programs about this Act;
- (d) review the use of the registry;
- (e) review the exercise of discretion by ministers under this Act;
- (f) review the receipt, handling and disposition of applications for review under Part IV and applications for investigation under Part V;
- (g) review ministry plans and priorities for conducting reviews under Part IV;
- (h) review the use of the right of action set out in section 84, the use of defences set out in section 85, and reliance on section 103 respecting public nuisance actions; and
- (i) review recourse to the procedure under Part VII for complaints about employer reprisals.

Annual
report

58.—(1) The Environmental Commissioner shall report annually to the Speaker of

financières du bureau du commissaire à l'environnement.

Fonctions

57 Outre les autres fonctions qu'il doit remplir aux termes de la présente loi, le commissaire à l'environnement a les fonctions suivantes :

- a) examiner la façon dont la présente loi est mise en application et la façon dont les exigences de celle-ci sont observées par les ministères;
- b) à la demande d'un ministre, fournir des conseils à son ministère sur la façon d'observer les exigences de la présente loi, notamment sur ce qui suit :
 - (i) la façon d'élaborer une déclaration ministérielle sur les valeurs environnementales qui soit conforme aux exigences de la présente loi et qui soit compatible avec les autres déclarations ministérielles sur les valeurs environnementales,
 - (ii) la façon de veiller à ce qu'il soit tenu compte de la déclaration ministérielle sur les valeurs environnementales chaque fois que sont prises au ministère des décisions susceptibles d'influer considérablement sur l'environnement;
- c) à la demande d'un ministre, aider son ministère à fournir des programmes d'éducation concernant la présente loi;
- d) examiner la façon dont le registre est utilisé;
- e) examiner la façon dont les ministres exercent leurs pouvoirs discrétionnaires en vertu de la présente loi;
- f) examiner la façon dont les demandes d'examen prévues à la partie IV et les demandes d'enquête prévues à la partie V sont reçues, traitées et réglées;
- g) examiner les plans et priorités des ministères en ce qui concerne la tenue d'examen aux termes de la partie IV;
- h) examiner l'utilisation qui est faite du droit d'action prévu à l'article 84, l'utilisation qui est faite des moyens de défense prévus à l'article 85 et le recours à l'article 103 en ce qui concerne les actions pour nuisance publique;
- i) examiner le recours à la procédure prévue à la partie VII en ce qui concerne les plaintes à l'égard des représailles exercées par un employeur.

58 (1) Le commissaire à l'environnement présente chaque année un rapport au prési-

Rapport
annuel

the Assembly who shall lay the report before the Assembly as soon as reasonably possible.

Same

(2) The annual report shall include,

- (a) a report on the work of the Environmental Commissioner and on whether the ministries affected by this Act have co-operated with requests by the Commissioner for information;
- (b) a summary of the information gathered by the Environmental Commissioner as a result of performing the functions set out in section 57;
- (c) a list of all proposals of which notice has been given under section 15, 16 or 22 during the period covered by the report but not under section 36 in the same period;
- (d) any information prescribed by the regulations under this Act; and
- (e) any information that the Environmental Commissioner considers appropriate.

Same

(3) The first report under subsection (1) shall be submitted in the first half of 1996 and shall cover the period beginning on the day this Act receives Royal Assent and ending on December 31st, 1995.

Special reports

(4) The Environmental Commissioner may make a special report to the Speaker of the Assembly at any time on any matter related to this Act that, in the opinion of the Commissioner, should not be deferred until the annual report, and the Speaker shall lay the report before the Assembly as soon as reasonably possible.

Report on ministry statement of environmental values

(5) If the Environmental Commissioner considers that a minister has failed to comply with section 7, 8 or 9 respecting a ministry statement of environmental values, the Commissioner shall, as soon as reasonably possible, report to the Speaker of the Assembly who shall lay the report before the Assembly as soon as reasonably possible.

Special assignments

59. The Environmental Commissioner shall perform special assignments as required by the Assembly, but such assignments shall not take precedence over the other duties of the Commissioner under this Act.

Examination on oath or affirmation

60.—(1) The Environmental Commissioner may examine any person on oath or solemn affirmation on any matter related to

dent de l'Assemblée, qui le fait déposer devant l'Assemblée dans les meilleurs délais raisonnables.

(2) Le rapport annuel comprend les éléments suivants :

- a) un rapport sur les travaux du commissaire à l'environnement et sur la question de savoir si les ministères visés par la présente loi ont collaboré avec le commissaire lorsqu'il leur a demandé des renseignements;
- b) un résumé des renseignements recueillis par le commissaire à l'environnement dans l'exercice des fonctions énoncées à l'article 57;
- c) la liste des propositions dont avis a été donné aux termes de l'article 15, 16 ou 22 au cours de la période visée par le rapport, mais non aux termes de l'article 36 pendant la même période;
- d) les renseignements prescrits par les règlements pris en application de la présente loi;
- e) les autres renseignements que le commissaire à l'environnement juge appropriés.

(3) Le premier rapport prévu au paragraphe (1) est soumis au cours du premier semestre de 1996 et vise la période commençant le jour où la présente loi reçoit la sanction royale et se terminant le 31 décembre 1995.

(4) Le commissaire à l'environnement peut présenter, à n'importe quel moment, au président de l'Assemblée un rapport spécial sur toute question ayant trait à la présente loi qui, selon le commissaire, ne devrait pas être différée jusqu'au rapport annuel. Le président dépose ensuite ce rapport devant l'Assemblée dans les meilleurs délais raisonnables.

(5) Si le commissaire à l'environnement juge qu'un ministre ne s'est pas conformé à l'article 7, 8 ou 9 en ce qui concerne une déclaration ministérielle sur les valeurs environnementales, il présente, dans les meilleurs délais raisonnables, un rapport au président de l'Assemblée qui le dépose ensuite devant l'Assemblée dans les meilleurs délais raisonnables.

59 Le commissaire à l'environnement s'acquitte des projets spéciaux dont le charge l'Assemblée. Toutefois, ces projets ne doivent pas l'emporter sur les autres fonctions que doit remplir le commissaire aux termes de la présente loi.

60 (1) Le commissaire à l'environnement peut interroger quiconque sous serment ou affirmation solennelle sur toute question

Idem

Idem

Rapports spéciaux

Rapport sur la déclaration ministérielle sur les valeurs environnementales

Projets spéciaux

Interrogatoire sous serment ou affirmation solennelle

the performance of the Commissioner's duties under this Act and may in the course of the examination require the production in evidence of documents or other things.

Same

(2) For the purposes of an examination under subsection (1), the Commissioner has the powers conferred on a commission under Part II of the *Public Inquiries Act* and the Part applies to the examination as if it were an inquiry under that Act.

PART IV APPLICATION FOR REVIEW

Application for review

61.—(1) Any two persons resident in Ontario who believe that an existing policy, Act, regulation or instrument of Ontario should be amended, repealed or revoked in order to protect the environment may apply to the Environmental Commissioner for a review of the policy, Act, regulation or instrument by the appropriate minister.

Same

(2) Any two persons resident in Ontario who believe that a new policy, Act or regulation of Ontario should be made or passed in order to protect the environment may apply to the Environmental Commissioner for a review of the need for the new policy, Act or regulation by the appropriate minister.

Same

(3) An application under subsection (1) or (2) shall be in the form provided for the purpose by the office of the Environmental Commissioner and shall include,

- (a) the names and addresses of the applicants;
- (b) an explanation of why the applicants believe that the review applied for should be undertaken in order to protect the environment; and
- (c) a summary of the evidence supporting the applicants' belief that the review applied for should be undertaken in order to protect the environment.

Same

(4) In addition, an application under subsection (1) shall clearly identify the policy, Act, regulation or instrument in respect of which a review is sought.

Referral to minister

62.—(1) Within ten days of receiving an application for review, the Environmental Commissioner shall do the following:

1. Refer the application to the minister or ministers for the ministry or ministries that the Environmental Commis-

ayant trait à l'exercice des fonctions du commissaire aux termes de la présente loi et peut, dans le cadre de cet interrogatoire, exiger que soient produits en preuve des documents ou autres choses.

Idem

(2) Aux fins d'un interrogatoire prévu au paragraphe (1), le commissaire dispose des mêmes pouvoirs que ceux qui sont conférés à une commission en vertu de la partie II de la *Loi sur les enquêtes publiques*, laquelle partie s'applique à l'interrogatoire comme s'il s'agissait d'une enquête menée aux termes de cette loi.

PARTIE IV DEMANDE D'EXAMEN

Demande d'examen

61 (1) Deux personnes qui résident en Ontario et qui croient qu'une politique, une loi, un règlement ou un acte de l'Ontario devrait être modifié, abrogé ou révoqué en vue de protéger l'environnement peuvent demander au commissaire à l'environnement de faire examiner par le ministre compétent la politique, la loi, le règlement ou l'acte en question.

Idem

(2) Deux personnes qui résident en Ontario et qui croient qu'une politique, une loi ou un règlement de l'Ontario devrait être adopté ou pris en vue de protéger l'environnement peuvent demander au commissaire à l'environnement de charger le ministre compétent d'examiner si la politique, la loi ou le règlement en question est nécessaire.

Idem

(3) La demande visée au paragraphe (1) ou (2) est rédigée selon la formule fournie à cette fin par le bureau du commissaire à l'environnement et comprend les renseignements suivants :

- a) les nom et adresse des auteurs de la demande;
- b) les raisons pour lesquelles les auteurs de la demande croient que l'examen demandé devrait être effectué en vue de protéger l'environnement;
- c) un résumé des preuves sur lesquelles s'appuient les auteurs de la demande pour croire que l'examen demandé devrait être effectué en vue de protéger l'environnement.

Idem

(4) En outre, la demande visée au paragraphe (1) indique clairement la politique, la loi, le règlement ou l'acte dont l'examen est demandé.

Renvoi à un ministre

62 (1) Dans les dix jours suivant la réception d'une demande d'examen, le commissaire à l'environnement prend les mesures suivantes :

1. Il renvoie la demande au ministre responsable du ministère ou aux ministres responsables des ministères qu'il juge

sioner considers appropriate to review the matters raised in the application.

2. Where an application is referred to a minister for a ministry not prescribed for the purposes of this Part, give notice to the applicants in accordance with subsection (2).

Referral to ministry not prescribed for this Part

(2) A notice under paragraph 2 of subsection (1) shall,

- (a) name the ministry or ministries to which the application has been referred;
- (b) identify any ministry named under clause (a) that is not prescribed for the purposes of this Part; and
- (c) explain that the obligations set out in sections 65 to 72 apply only in relation to ministries prescribed for the purposes of this Part.

Application of ss. 65 to 72

63.—(1) Subject to subsection (2) and section 64, the obligations set out in sections 65 to 72 apply where a minister receives an application for review from the Environmental Commissioner for consideration in a ministry that is prescribed for the purposes of this Part.

Same

(2) The obligations in sections 65 to 72 do not apply in relation to an application for,

- (a) a review of an existing Act, regulation or instrument that is not prescribed for the purposes of this Part;
- (b) a review of the need for a new exemption under the *Environmental Assessment Act*.

Same

(3) A minister who determines under subsection (2) that sections 65 to 72 do not apply in relation to an application for review shall give notice of the determination to the applicants.

Forwarding applications to more appropriate ministries

64.—(1) A minister who has received an application from the Environmental Commissioner for review in his or her ministry and who believes that his or her ministry is not an appropriate ministry to review matters raised in the application may, with the consent of the Commissioner, return the application to the Commissioner to be forwarded under section 62 to another ministry if appropriate.

Same

(2) A minister who has returned an application in accordance with subsection (1) has no obligations in relation to the application under sections 65 to 72.

compétents pour examiner les questions soulevées dans la demande.

2. Si la demande est renvoyée au ministre responsable d'un ministère non prescrit pour l'application de la présente partie, il donne un avis aux auteurs de la demande conformément au paragraphe (2).

(2) L'avis prévu à la disposition 2 du paragraphe (1) :

- a) nomme le ou les ministères auxquels la demande a été renvoyée;
- b) indique tout ministère nommé aux termes de l'alinéa a) qui n'est pas prescrit pour l'application de la présente partie;
- c) explique que les obligations énoncées aux articles 65 à 72 ne s'appliquent qu'aux ministères prescrits pour l'application de la présente partie.

Renvoi à un ministère non prescrit pour l'application de la présente partie

63 (1) Sous réserve du paragraphe (2) et de l'article 64, les obligations énoncées aux articles 65 à 72 s'appliquent lorsqu'un ministre reçoit une demande d'examen du commissaire à l'environnement qui doit être étudiée dans un ministère qui est prescrit pour l'application de la présente partie.

Application des art. 65 à 72

(2) Les obligations énoncées aux articles 65 à 72 ne s'appliquent pas à l'égard d'une ou l'autre des demandes suivantes :

- a) la demande d'examen d'une loi, d'un règlement ou d'un acte en vigueur qui ne sont pas prescrits pour l'application de la présente partie;
- b) la demande d'examen de la nécessité d'une nouvelle exemption aux termes de la *Loi sur les évaluations environnementales*.

Idem

(3) Le ministre qui établit, aux termes du paragraphe (2), que les articles 65 à 72 ne s'appliquent pas à l'égard d'une demande d'examen en avise les auteurs de la demande.

Idem

64 (1) Le ministre qui a reçu du commissaire à l'environnement une demande d'examen dans son ministère et qui croit que son ministère n'est pas le ministère compétent pour examiner les questions soulevées dans la demande peut, avec le consentement du commissaire, retourner la demande à ce dernier pour qu'il la renvoie, aux termes de l'article 62, à un autre ministère, si cela est approprié.

Transmission des demandes à des ministères plus compétents

(2) Le ministre qui a retourné une demande conformément au paragraphe (1) n'est assujéti à aucune des obligations prévues aux articles 65 à 72 relativement à la demande.

Idem

Acknowledgment of receipt

65. A minister who receives an application for review from the Environmental Commissioner shall acknowledge receipt to the applicants within twenty days of receiving the application from the Commissioner.

Notice to persons with direct interest

66.—(1) A minister who receives an application for review from the Environmental Commissioner in respect of an instrument shall also give notice that the application has been made to any person who the minister considers ought to get the notice because the person might have a direct interest in matters raised in the application.

Same

(2) A notice under subsection (1) shall include a description of the application for review.

Preliminary consideration

67.—(1) The minister shall consider each application for review in a preliminary way to determine whether the public interest warrants a review in his or her ministry of matters raised in the application.

Same

(2) In determining whether the public interest warrants a review, the minister may consider,

- (a) the ministry statement of environmental values;
- (b) the potential for harm to the environment if the review applied for is not undertaken;
- (c) the fact that matters sought to be reviewed are otherwise subject to periodic review;
- (d) any social, economic, scientific or other evidence that the minister considers relevant;
- (e) any submission from a person who received a notice under section 66;
- (f) the resources required to conduct the review; and
- (g) any other matter that the minister considers relevant.

Same

(3) In addition, in determining whether the public interest warrants a review of an existing policy, Act, regulation or instrument applied for under subsection 61 (1), the minister may consider,

- (a) the extent to which members of the public had an opportunity to participate in the development of the policy, Act, regulation or instrument in respect of which a review is sought; and
- (b) how recently the policy, Act, regulation or instrument was made, passed or issued.

65 Le ministre qui reçoit une demande d'examen du commissaire à l'environnement en accuse réception aux auteurs de la demande au plus tard vingt jours après qu'il l'a reçue.

Accusé de réception

66 (1) Le ministre qui reçoit du commissaire à l'environnement une demande d'examen au sujet d'un acte en donne également avis à toute personne qui, selon lui, devrait recevoir l'avis parce qu'elle pourrait être directement intéressée par les questions soulevées dans la demande.

Avis donné aux personnes directement intéressées

(2) L'avis prévu au paragraphe (1) comprend une description de la demande d'examen.

Idem

67 (1) Le ministre étudie chaque demande d'examen de façon préliminaire en vue d'établir si un examen dans son ministère des questions soulevées dans la demande est justifié dans l'intérêt public.

Étude préliminaire

(2) Pour établir si l'examen est justifié dans l'intérêt public, le ministre peut tenir compte des éléments suivants :

Idem

- a) la déclaration ministérielle sur les valeurs environnementales;
- b) les risques d'atteinte à l'environnement si l'examen demandé n'est pas effectué;
- c) le fait que les questions dont l'examen est demandé font par ailleurs l'objet d'un examen périodique;
- d) toute preuve d'ordre social, économique, scientifique ou autre qu'il juge pertinente;
- e) toute observation d'une personne qui a reçu l'avis prévu à l'article 66;
- f) les ressources exigées pour effectuer l'examen;
- g) toute autre question qu'il juge pertinente.

(3) En outre, pour établir si l'examen d'une politique, d'une loi, d'un règlement ou d'un acte en vigueur qui est demandé en vertu du paragraphe 61 (1) est justifié dans l'intérêt public, le ministre peut tenir compte des questions suivantes :

Idem

- a) dans quelle mesure les membres du public ont eu la possibilité de participer à l'élaboration de la politique, de la loi, du règlement ou de l'acte dont l'examen est demandé;
- b) à quand remonte l'adoption de la politique ou de la loi, la prise du règlement ou la délivrance de l'acte.

Review of recent decisions

68.—(1) For the purposes of subsection 67 (1), a minister shall not determine that the public interest warrants a review of a decision made during the five years preceding the date of the application for review if the decision was made in a manner that the minister considers consistent with the intent and purpose of Part II.

Exception

(2) Subsection (1) does not apply where it appears to the minister that,

(a) there is social, economic, scientific or other evidence that failure to review the decision could result in significant harm to the environment; and

(b) the evidence was not taken into account when the decision sought to be reviewed was made.

Duty to review

69.—(1) A minister who determines that the public interest warrants a review under section 67 shall conduct the review.

Priorities for reviews

(2) A minister may develop plans and set priorities for the reviews required to be conducted under this Part in his or her ministry.

Notice of decision whether to review

70. Within sixty days of receiving an application for review under section 61, the minister shall give notice of his or her decision whether to conduct a review, together with a brief statement of the reasons for the decision to,

(a) the applicants;

(b) the Environmental Commissioner; and

(c) any other person who the minister considers ought to get the notice because the person might be directly affected by the decision.

Notice of completion of review

71.—(1) Within thirty days of completing a review applied for under section 61, the minister shall give notice of the outcome of the review to the persons mentioned in clauses 70 (a) to (c).

Same

(2) The notice referred to in subsection (1) shall state what action, if any, the minister has taken or proposes to take as a result of the review.

No disclosure of personal information about applicants

72. A notice under section 66, 70 or 71 shall not disclose the names or addresses of the applicants or any other personal information about them.

Application of Act to proposals resulting from review

73. The provisions of this Act apply to a proposal for a policy, Act, regulation or instrument under consideration in a ministry as a result of a review under this Part in the same way that they apply to any other pro-

68 (1) Pour l'application du paragraphe 67 (1), un ministre ne doit pas établir qu'est justifié dans l'intérêt public l'examen d'une décision prise au cours des cinq années précédant la date de la demande d'examen si cette décision a été prise d'une manière qu'il juge conforme à l'intention et à l'objet de la partie II.

Examen de décisions récentes

(2) Le paragraphe (1) ne s'applique pas lorsqu'il appert au ministre que :

Exception

a) d'une part, il existe des preuves d'ordre social, économique, scientifique ou autre qui indiquent que le fait de ne pas examiner la décision pourrait entraîner une atteinte considérable à l'environnement;

b) d'autre part, il n'a pas été tenu compte de ces preuves lorsque la décision dont l'examen est demandé a été prise.

69 (1) Tout ministre qui établit que l'examen visé à l'article 67 est justifié dans l'intérêt public doit effectuer cet examen.

Obligation d'examiner

(2) Tout ministre peut élaborer des plans et fixer des priorités en ce qui concerne les examens qui doivent être effectués dans son ministère aux termes de la présente partie.

Plans et priorités relatifs aux examens

70 Dans les soixante jours suivant la réception d'une demande d'examen visée à l'article 61, le ministre donne avis de sa décision d'effectuer ou non un examen, ainsi qu'un bref exposé des motifs de celle-ci, aux personnes suivantes :

Avis de décision sur la demande d'examen

a) les auteurs de la demande;

b) le commissaire à l'environnement;

c) toute autre personne qui, selon lui, devrait recevoir l'avis parce qu'elle pourrait être directement touchée par la décision.

71 (1) Dans les trente jours suivant l'achèvement de l'examen demandé en vertu de l'article 61, le ministre donne avis des résultats de l'examen aux personnes visées aux alinéas 70 a) à c).

Avis d'achèvement de l'examen

(2) L'avis visé au paragraphe (1) indique quelles mesures, le cas échéant, le ministre a prises ou envisage de prendre par suite de l'examen.

Idem

72 L'avis prévu à l'article 66, 70 ou 71 ne doit pas divulguer les nom et adresse des auteurs de la demande, ni aucun autre renseignement personnel à leur sujet.

Non-divulgaration de renseignements personnels sur les auteurs de la demande

73 Les dispositions de la présente loi s'appliquent à toute proposition de politique, de loi, de règlement ou d'acte qui est à l'étude dans un ministère par suite d'un examen effectué aux termes de la présente partie de la même manière qu'elles s'appliquent à

Application de la Loi aux propositions résultant de l'examen

posal for a policy, Act, regulation or instrument.

PART V APPLICATION FOR INVESTIGATION

Application
for investiga-
tion

74.—(1) Any two persons resident in Ontario who believe that a prescribed Act, regulation or instrument has been contravened may apply to the Environmental Commissioner for an investigation of the alleged contravention by the appropriate minister.

Same

(2) An application under this section shall be in the form provided for the purpose by the office of the Environmental Commissioner and shall include,

- (a) the names and addresses of the applicants;
- (b) a statement of the nature of the alleged contravention;
- (c) the names and addresses of each person alleged to have been involved in the commission of the contravention, to the extent that this information is available to the applicants;
- (d) a summary of the evidence supporting the allegations of the applicants;
- (e) the names and addresses of each person who might be able to give evidence about the alleged contravention, together with a summary of the evidence they might give, to the extent that this information is available to the applicants;
- (f) a description of any document or other material that the applicants believe should be considered in the investigation;
- (g) a copy of any document referred to in clause (f), where reasonable; and
- (h) details of any previous contacts with the office of the Environmental Commissioner or any ministry regarding the alleged contravention.

Statement of
belief

(3) An application under this section shall also include a statement by each applicant or, where an applicant is a corporation, by a director or officer of the corporation, that he or she believes that the facts alleged in the application are true.

Same

(4) The statement referred to in subsection (3) shall be sworn or solemnly affirmed before a commissioner for taking affidavits in Ontario.

toute autre proposition de politique, de loi, de règlement ou d'acte.

PARTIE V DEMANDE D'ENQUÊTE

Demande
d'enquête

74 (1) Deux personnes qui résident en Ontario et qui croient qu'il y a eu contravention à une loi, à un règlement ou à un acte prescrits peuvent demander au commissaire à l'environnement de faire mener par le ministre compétent une enquête sur la contravention reprochée.

Idem

(2) La demande visée au présent article est rédigée selon la formule fournie à cette fin par le bureau du commissaire à l'environnement et comprend les renseignements suivants :

- a) les nom et adresse des auteurs de la demande;
- b) l'indication de la nature de la contravention reprochée;
- c) les nom et adresse de chaque personne qui aurait été impliquée dans la commission de la contravention, dans la mesure où ces renseignements sont connus des auteurs de la demande;
- d) un résumé des preuves à l'appui des allégations des auteurs de la demande;
- e) les nom et adresse de chaque personne qui pourrait être en mesure de témoigner au sujet de la contravention reprochée, ainsi qu'un résumé des preuves qu'elle pourrait donner, dans la mesure où ces renseignements sont connus des auteurs de la demande;
- f) une description de tout document ou autre chose dont il faudrait tenir compte dans le cadre de l'enquête, selon les auteurs de la demande;
- g) une copie de tout document visé à l'alinéa f), lorsque cela est raisonnable;
- h) les détails de toute communication antérieure avec le bureau du commissaire à l'environnement ou avec tout ministère au sujet de la contravention reprochée.

Déclaration
de conviction

(3) La demande visée au présent article comprend également une déclaration de chacun des auteurs de la demande ou, lorsqu'un auteur de la demande est une personne morale, une déclaration d'un administrateur ou dirigeant de la personne morale portant qu'il tient pour véridiques les faits allégués dans la demande.

Idem

(4) La déclaration visée au paragraphe (3) est faite sous serment ou sous affirmation solennelle devant un commissaire aux affidavits en Ontario.

Referral to
minister

75. Within ten days of receiving an application under section 74, the Environmental Commissioner shall refer it to the minister responsible for the administration of the Act under which the contravention is alleged to have been committed.

75 Dans les dix jours suivant la réception d'une demande visée à l'article 74, le commissaire à l'environnement la renvoie au ministre chargé de l'administration de la loi à laquelle il y aurait eu contravention.

Renvoi au
ministreAcknowledg-
ment of
receipt

76. The minister shall acknowledge receipt of an application for investigation to the applicants within twenty days of receiving the application from the Environmental Commissioner.

76 Le ministre accuse réception de la demande d'enquête aux auteurs de la demande au plus tard vingt jours après qu'il l'a reçue du commissaire à l'environnement.

Accusé de
réceptionDuty to
investigate

77.—(1) The minister shall investigate all matters to the extent that the minister considers necessary in relation to a contravention alleged in an application.

77 (1) Le ministre enquête sur toutes les questions dans la mesure où il le juge nécessaire relativement à une contravention qui est reprochée dans la demande.

Obligation
d'enquête

Same

(2) Nothing in this section requires a minister to conduct an investigation in relation to a contravention alleged in an application if the minister considers that,

(2) Le présent article n'a pas pour effet d'exiger d'un ministre qu'il mène une enquête relativement à une contravention qui est reprochée dans une demande s'il juge, selon le cas, que :

Idem

- (a) the application is frivolous or vexatious;
- (b) the alleged contravention is not serious enough to warrant an investigation; or
- (c) the alleged contravention is not likely to cause harm to the environment.

- a) la demande est frivole ou vexatoire;
- b) la contravention reprochée n'est pas suffisamment grave pour justifier une enquête;
- c) la contravention reprochée ne portera vraisemblablement pas atteinte à l'environnement.

Same

(3) Nothing in this section requires a minister to duplicate an ongoing or completed investigation.

(3) Le présent article n'a pas pour effet d'exiger d'un ministre qu'il répète une enquête qui est en cours ou terminée.

Idem

Notice of
decision not
to investigate

78.—(1) If the minister decides that an investigation is not required under section 77, the minister shall give notice of the decision, together with a brief statement of the reasons for the decision, to,

78 (1) S'il décide qu'une enquête n'est pas requise aux termes de l'article 77, le ministre donne un avis de la décision, ainsi qu'un bref exposé des motifs de celle-ci, aux personnes suivantes :

Avis de la
décision de
ne pas
enquêter

- (a) the applicants;
- (b) each person alleged in the application to have been involved in the commission of the contravention for whom an address is given in the application; and
- (c) the Environmental Commissioner.

- a) les auteurs de la demande;
- b) chaque personne qui, d'après la demande, aurait été impliquée dans la commission de la contravention et dont une adresse est donnée dans la demande;
- c) le commissaire à l'environnement.

Same

(2) A minister need not give notice under subsection (1) if an investigation in relation to the contravention alleged in the application is ongoing apart from the application.

(2) Le ministre n'est pas tenu de donner l'avis prévu au paragraphe (1) si une enquête relativement à la contravention qui est reprochée dans la demande est déjà en cours indépendamment de la demande.

Idem

Same

(3) A notice under subsection (1) shall be given within sixty days of receiving the application for investigation.

(3) L'avis prévu au paragraphe (1) est donné dans les soixante jours suivant la réception de la demande d'enquête.

Idem

Time
required for
investigation

79.—(1) Within 120 days of receiving an application for an investigation in respect of which no notice is given under section 78, the minister shall either complete the investigation or give the applicants a written estimate of the time required to complete it.

79 (1) Dans les 120 jours suivant la réception d'une demande d'enquête à l'égard de laquelle aucun avis n'est donné aux termes de l'article 78, le ministre termine l'enquête ou donne aux auteurs de la demande une estimation par écrit du délai nécessaire pour la terminer.

Délai néces-
saire pour
terminer l'en-
quête

Same

(2) Within the time given in an estimate under subsection (1), the minister shall either complete the investigation or give the applicants a revised written estimate of the time required to complete it.

Same

(3) Subsection (2) applies to a revised estimate given under subsection (2) as if it were an estimate given under subsection (1).

Notice of completion of investigation

80.—(1) Within thirty days of completing an investigation, the minister shall give notice of the outcome of the investigation to the persons mentioned in clauses 78 (1) (a) to (c).

Same

(2) The notice referred to in subsection (1) shall state what action, if any, the minister has taken or proposes to take as a result of the investigation.

No disclosure of personal information about applicants

81. A notice under section 78 or 80 shall not disclose the names or addresses of the applicants or any other personal information about them.

PART VI RIGHT TO SUE

HARM TO A PUBLIC RESOURCE

Definitions

82. In this Part,

“court” means the Ontario Court (General Division) but does not include the Small Claims Court; (“tribunal”)

“municipality” means a locality the inhabitants of which are incorporated; (“municipalité”)

“public land” means land that belongs to,

- (a) the Crown in right of Ontario,
- (b) a municipality, or
- (c) a conservation authority,

but does not include land that is leased from a person referred to in clauses (a) to (c) and that is used for agricultural purposes; (“terre publique”)

“public resource” means,

- (a) air,
- (b) water, not including water in a body of water the bed of which is privately owned and on which there is no public right of navigation,
- (c) unimproved public land,
- (d) any parcel of public land that is larger than five hectares and is used for,
 - (i) recreation,
 - (ii) conservation,

(2) Dans le délai donné dans l'estimation visée au paragraphe (1), le ministre termine l'enquête ou donne aux auteurs de la demande une nouvelle estimation par écrit du délai nécessaire pour la terminer.

Idem

(3) Le paragraphe (2) s'applique à une nouvelle estimation donnée aux termes du paragraphe (2) comme s'il s'agissait d'une estimation donnée aux termes du paragraphe (1).

Idem

80 (1) Dans les trente jours suivant l'achèvement de l'enquête, le ministre donne un avis des résultats de celle-ci aux personnes visées aux alinéas 78 (1) a) à c).

Avis d'achèvement de l'enquête

(2) L'avis prévu au paragraphe (1) indique quelles mesures, le cas échéant, le ministre a prises ou envisage de prendre par suite de l'enquête.

Idem

81 L'avis prévu à l'article 78 ou 80 ne doit pas divulguer les nom et adresse des auteurs de la demande, ni aucun autre renseignement personnel à leur sujet.

Non-divulgaration de renseignements personnels sur les auteurs de la demande

PARTIE VI DROIT D'INTENTER UNE ACTION

ATTEINTE À UNE RESSOURCE PUBLIQUE

82 Les définitions qui suivent s'appliquent à la présente partie. Définitions

«municipalité» Localité dont les habitants sont constitués en personne morale. («municipality»)

«ressource publique» S'entend de ce qui suit :

- a) l'air,
- b) l'eau, à l'exclusion de celle contenue dans un plan d'eau dont le lit ou le fonds est propriété privée et sur lequel il n'existe aucun droit public de navigation,
- c) les terres publiques non aménagées,
- d) toute parcelle de terre publique d'une superficie supérieure à cinq hectares qui est utilisée à l'une des fins suivantes :
 - (i) les loisirs,
 - (ii) la préservation,
 - (iii) l'extraction des ressources,
 - (iv) la gestion des ressources,
 - (v) une fin semblable à l'une de celles mentionnées aux sous-alinéas (i) à (iv),

e) tout végétal, animal ou écosystème ayant un rapport avec l'air, l'eau ou

APPENDIX 4

**NEW ZEALAND PARLIAMENTARY COMMISSIONER
FOR THE ENVIRONMENT
CORPORATE PLAN 1993-94**

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Part One: Role of the Commissioner

1.1 Preamble

The Parliamentary Commissioner for the Environment is an Officer of Parliament appointed by the Governor-General on the recommendation of the House of Representatives and has a five year term of appointment. The Environment Act 1986 establishes the office of Parliamentary Commissioner for the Environment and details the Commissioner's powers and functions.

The current Commissioner is Mrs. Helen R. Hughes who began a second five year term of appointment on 1 January 1992.

The Commissioner's offices are located at Floor 11, Reserve Bank Building, 2 The Terrace, Wellington (Phone 471 1669 and Fax 411 0331).

1.2 Purpose of the Commissioner

To provide an independent check on the capability of the New Zealand system of environmental management and the performance of public authorities in maintaining and improving the quality of the environment.

1.3 Outcome Statement

- *Greater public authority accountability for decisions affecting the environment.*
- *Improved public authority environmental management.*
- *Improved capability of the New Zealand system of environmental management to deliver sound decisions.*
- *Improved quality of the environment in New Zealand.*

Part Two: Operating Environment

2.1 Five Year Goal

The Commissioner expects to carry out a second five year review of environmental management in New Zealand based on investigations carried out since December 1991 and to report on this review in 1996.

The adequacy of the system established by the Government to achieve sustainable management of natural and physical resources and to protect the environment will be assessed.

This means the findings of each major investigation completed since December 1991 will have common themes identified.

2.2. Significant Issues 1993-94

It is considered that the following issues could have an influence on the operations of the Commissioner in 1993-94 and this plan has been formulated to take these into account.

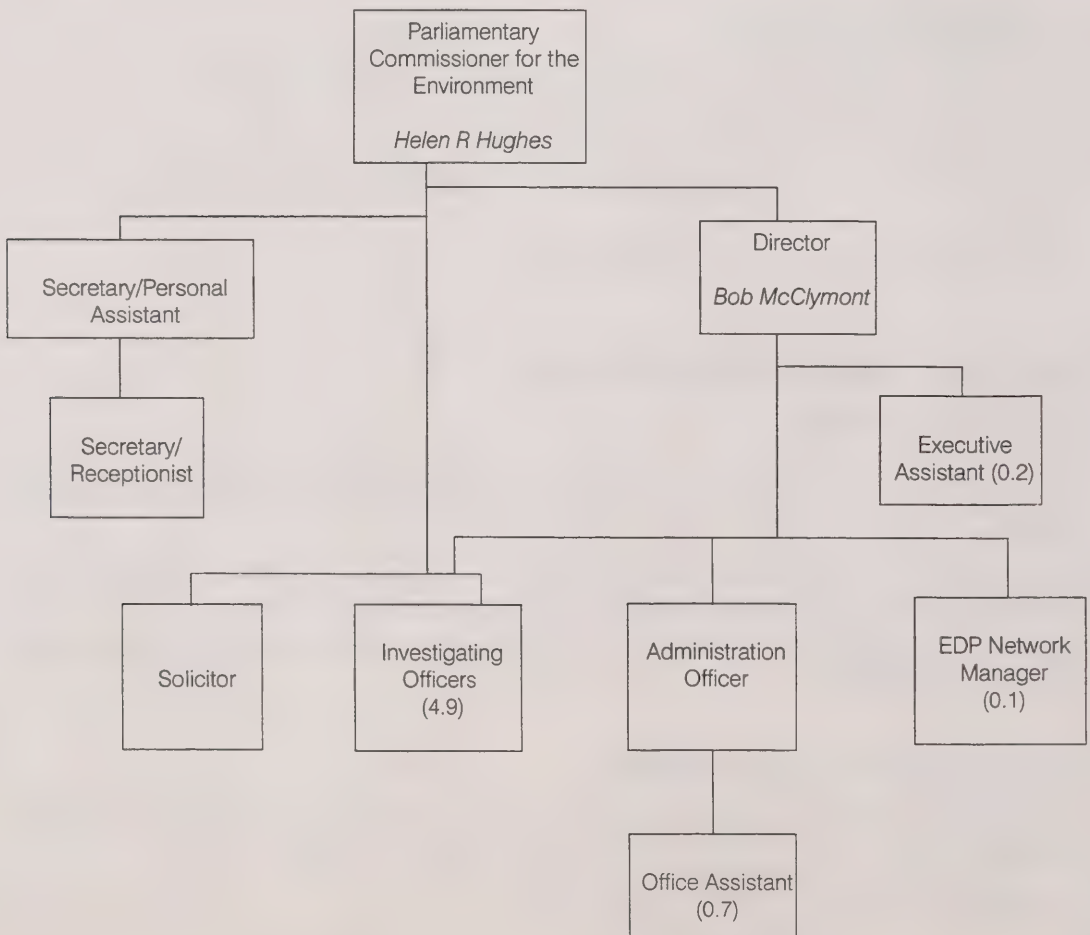
- *Public concern about chemicals in the environment.*

- *Government forestry proposals.*
- *Energy sector initiatives.*
- *Public expectations, participation and distrust of public authority environmental management.*
- *Parliamentary restructuring.*
- *Implementation of Resource Management Act.*
- *Third party rights during Crown/Maori negotiations.*
- *Local government restructuring.*

Reports on chemicals, forestry, and third party rights are programmed for 1993 and a report on unitary authority performance for 1994. Parliamentary liaison will be reviewed following the referendum.

2.3 Structure of the Commissioner's Office

The Commissioner employs three full-time and four part-time investigating staff, one solicitor and four administrative staff. A Director assists the Commissioner in the management of her office. From time to time professional consultancy services are engaged for the provision of specialist advice.



2.4 Clients of the Commissioner

The following chart describes the relationship between the Commissioner and the various client groups.

Initiators of Investigations and Reviews	Primary Receivers of Advice	Beneficiaries
House of Representatives (Priority Client)	<ul style="list-style-type: none"> House of Representatives Public Authorities 	<ul style="list-style-type: none"> House of Representatives Taxpayers and Ratepayers Tangata Wbeous Industry Public Authorities The New Zealand Environment
<ul style="list-style-type: none"> Public Authorities Members of Parliament Officers of Parliament Tangata Wbeous Interest groups Citizens 		

Client Demand

In 1993-93, demand for the Commissioner's services was as follows:

	1992-93	1991-92
House of Representatives	2	6
Public Authorities	46	56
Public	203	168

Commissioner's Output

In 1992-93 the Commissioner provided reports and papers as follows:

Output	Total
Investigation Reports	6
General Enquiry Reports	76
Information Transfer Papers	84
Reports for Committees of the House of Representatives	5
Reports on public authority responses to advice given by Commissioner	10

Part Three: Output of the Commissioner

3.1 Reports and Advice

The Commissioner's output takes the form of reports and advice as follows:

- (1) Reports on the legal and other systems governing the environment (including reports on the nature and adequacy of the environmental laws and regulations, government systems for managing natural and physical resources and advice on new legislation or action required).
- (2) Advice on the performance of local and central government agencies (including advice on how well central and local governments are undertaking their functions in respect of their delegated duties and advice on any necessary preventive measures or remedial action).

3.2 Expenditure and Performance Assessment

Reports and Advice

Preparation of at least 90 reports on the legal and other systems governing the environment and/or the performance of public authorities administering the systems.

Project actual costs to be within 2 percent of final budget of \$773,000.

Transfer of Information

At least 170 requests for information to be processed at a cost of \$258,000.

Responses to requests for assistance, indicating within 30 days the action to be taken by the Commissioner, to be provided within 30 days in 85 percent of cases.

Part Four: Administrative Outputs

4.1 Compliance with External Requirements

The Commissioner is expected to comply with requirements of the following statutes:

- *Environment Act, 1986;*
- *Public Finance Act, 1989;*
- *Official Information Act, 1982;*
- *Employment Contracts Act, 1991;*
- *Statistics Act, 1975.*

It is also expected that the Commissioner will comply with Standing Orders of the House of Representatives and requirements of the Speaker.

4.2 Internal Management Systems and Support Services

Internal systems and services operated by the office as a means to facilitate better delivery of the Commissioner's output that will be reviewed in 1993-94 include:

- *exploring possibilities for sharing library facilities;*
- *revision of the filing system;*
- *reviewing EEO procedures;*
- *improving financial reporting procedures.*

4.3 Special Projects

The following special projects will be undertaken to improve the management of the office and delivery of the Commissioner's output:

- *Civil Defence plan;*
- *parliamentary liaison will be reviewed following the outcome of the referendum;*
- *finalisation of new accommodation requirements;*
- *development of EDP database of information storage and retrieval.*

Part Five: Financial Performance

5.1 Operating Statement

	Voted 1992/3 \$000	Projected Outturn \$000	Vote 1993/4 \$000
Revenue			
Crown	1,040	1,040	1,031
Interest	5	8	5
Total Revenue	<u>1,045</u>	<u>1,048</u>	<u>1,036</u>
Output Expenses			
Personnel	663	653	710
Operating	357	357	306
Depreciation	20	20	15
Total Output Expenses	<u>1,040</u>	<u>1,030</u>	<u>1,031</u>
Net Surplus (Deficit)	5	18	5

5.2 Statement of Financial Position

	Actual Position 30 June '92 \$000	Estimated Position 30 June '93 \$000	Projected Position 30 June '94 \$000
Assets			
Cash and Bank Balances	90	59	52
Term Deposits with Crown	50	50	50
Prepayments	1		
Debtors and Receivables	1		
Fixed Assets	27	35	35
Total Assets	<u>169</u>	<u>144</u>	<u>137</u>
Liabilities			
Creditors and Payables	68	50	48
Provision for Payment of Surplus	32	18	5
Other Short-term Liabilities	70	77	85
Total Liabilities	<u>170</u>	<u>145</u>	<u>138</u>
Taxpayers' Funds	<u>(1)</u>	<u>(1)</u>	<u>(1)</u>
Total Liabilities and Taxpayers' Funds	169	144	137

5.3 Cash Flow Statement

	Voted 1992/93 \$000	Projected Outturn \$000	Vote 1993/94 \$000
Cash flows from operating activities			
Cash provided from supply of outputs to the Crown	1,040	1,040	1,031
Cash provided from interest	6	9	5
Cash disbursed to cost of producing outputs	(1,030)	(1,020)	(1,010)
Net cash flows from operating activities	<u>16</u>	<u>29</u>	<u>26</u>
Cash flows from investing activities			
Cash provided from sales of fixed assets	-	-	-
Cash disbursed to purchase of fixed assets	(28)	(28)	(15)
Net cash flows from investing activities	<u>(28)</u>	<u>(28)</u>	<u>(15)</u>
Cash flows from financing activities			
Cash provided from capital contribution from the Crown	-	-	-
Cash disbursed to payment of surplus to the Crown	(32)	(32)	(18)
Net cash flows from financing activities	<u>(32)</u>	<u>(32)</u>	<u>(18)</u>
Net decrease in cash held	<u>(44)</u>	<u>(31)</u>	<u>(7)</u>
Opening cash balances at 1 July	<u>140</u>	<u>140</u>	<u>109</u>
Closing cash balances at 30 June projected	96	109	102

